

214488

ORIGINAL

Before the
SURFACE TRANSPORTATION BOARD



Finance Docket No. 34737

YELLOWSTONE VALLEY RAILROAD, INC.
-LEASE AND OPERATION EXEMPTION-
BNSF RAILWAY COMPANY

ENTERED
Office of Proceedings

AUG 6 2005

Part of
Public Record

PETITION TO COMPEL DISCOVERY

Protestant, John D. Fitzgerald, ^{1/} for and on behalf of United Transportation Union-General Committee of Adjustment (UTU/GO-386), petitions the Surface Transportation Board (STB or Board), to compel discovery from respondent, Yellowstone Valley Railroad, Inc. (YVRR), in that counsel for protestant be furnished the agreement(s), for examination and copying, between Yellowstone Valley Railroad, Inc. (YVRR) and BNSF Railway Company (BNSF) for lease of the rail lines (including trackage rights), underlying the transaction and mentioned in the Notice of Exemption in this proceeding, filed August 2, 2005. (Notice, 4).

Counsel for YVRR has been advised of this discovery request orally, and in writing, attached; however, counsel for YVRR is unwilling to provide a copy of the agreement or agreements, in the absence of a protective order from the Board, suggesting the form

^{1/} General Chairman for United Transportation Union, with offices at 400 East Evergreen Blvd., Vancouver, WA 98660.

issued June 18, 2004, in F.D. No. 34509, Kaw River Railroad, Inc.-
Acquisition and Operation Exemption-The Kansas City Southern
Railway Company.

The discovery materials are necessary for the preparation of a petition for stay of the transactions, and perhaps for a subsequent petition to revoke. 49 CFR §1121.2.

Protestant does not consider a protective order to be necessary or appropriate, but will comply with any directive the Board may determine upon evaluation of any justification advanced by YVRR.

WHEREFORE, the Board should grant this petition to compel discovery, and require production of the agreement(s) sought herein.

Respectfully submitted,



Attorney for John D. Fitzgerald

August 5, 2005

Certificate of Service

I hereby certify I have served a copy of the foregoing by personal service upon counsel for YVRR.

Washington DC



Gordon P. MacDougall

LAW OFFICES
GORDON P. MACDOUGALL
1025 CONNECTICUT AVE, N. W.
WASHINGTON, D. C. 20038

TELEPHONE
AREA CODE 202
223-9738

August 5, 2005

BY HAND

Mr. Karl Morell
1455 F Street, N.W.-#225
Washington DC 20005

Re: Finance Docket No. 34737, Yellowstone Valley Railroad, Inc.-
Lease and Operation Exemption-BNSF Railway Company.

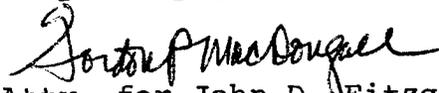
Dear Mr. Morell:

This letter is a follow-up to our conversation today, in which I request a copy of the lease agreement(s) underlying the transaction(s).

It is my understanding you decline to furnish a copy for examination and copying in the absence of an appropriate protective order to be issued by the Surface Transportation Board.

Please consider this a renewed request for the documents.

Very truly yours,


Atty. for John D. Fitzgerald